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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-----------------------|---------------------|------------------|
| 10/089,351      | 03/27/2002  | Dana Paul Gruenbacher | 8278                | 1392             |

27752 7590 05/03/2005

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EXAMINER

PRUNNER, KATHLEEN J

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3751

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/089,351

Applicant(s)

GRUENBACHER ET AL.

Examiner

Kathleen J. Prunner

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3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 031605.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Specification*

1. The specification is objected to as failing to provide proper antecedent basis for the claimed terminology. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). The claim terminology which lacks such antecedent basis is as follows: (A) “said rupturable reservoir comprises a ‘distribution head’ ”, as called for by claim 39. Correction is required. It is suggested that the specification be amended to include this claim terminology.
2. The following informalities in the claims are noted: (A) in claim 38, on line 2, “aperture” is misspelled. Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 21-40 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 21 now calls for “said heating and/or cooling element changes said first temperature of said product ‘upon activation’ ” and new claim 31 calls for “said heating and/or cooling element is activatable”. However, the original specification fails to support or even describe how such activation is effected or how it is activatable.

Claim 32 calls for the heating/cooling element to be “ ‘activated by’ anhydrous reactions, heats of solution, oxidation reactions, crystallization, corroding alloys, zeolite-liquid systems and/or heat of neutralization”. However, the originally filed disclosure, at page 33, lines 29-33,

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merely states that “the heating/cooling element may include ‘an exothermic or endothermic system that provides a heating or cooling effect’, respectively(;) (t)he systems may include anhydrous reactions, heats of solution, oxidation reactions, crystallization, corroding alloys, zeolite-liquid systems and/or heat of neutralization”. Therefore, the specification fails to support or describe how such an exothermic or endothermic system is activated.

Claim 36 calls for “said rupturable reservoir is ruptured ‘by mechanical force’ ”. However, the originally filed disclosure fails to support or describe that the reservoir is ruptured by mechanical force or even what constitutes such mechanical force. Page 10 of the originally filed disclosure merely describes that the “pouch is squeezed”, or the seal “will ideally rupture with 1-3 lbs of force when applied by the consumer”, or that the reservoir “can be subjected to sufficient force to rupture the reservoir and dispense the liquid by making a fist with the user’s hand”.

Claim 38 calls for a “said rupturable reservoir comprises a ‘dispersion aper(a)ture’ ”. However, the originally filed disclosure fails to support or describe that the reservoir comprises such a dispersion aperture. Page 11 of the originally filed disclosure merely describes a “dispensing aperture 39”.

5. Claims 21-40 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for an internal cavity that is accessible “through an opening” (note line 25 on page 8), does not reasonably provide enablement for “at least one externally accessible opening”, as called for by claim 21, which purports to more than one opening. The specification fails to support or describe how a semi-enclosed applicator can function with more than one externally accessible opening especially when it is in the form of a glove or mitt. Therefore, the specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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7. Claim 32 contains a term lacking proper antecedent basis. The claim recites the limitation "said heating/cooling elements" in line 1. There is insufficient antecedent basis for this limitation in the claim. Claim 21 calls for only a single heating/cooling element.

***Allowable Subject Matter***

8. Claims 21-40 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 1st and 2nd paragraphs, set forth in this Office action.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

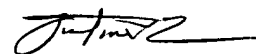
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen J. Prunner whose telephone number is 571-272-4894.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu, can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JUSTINE R. YU  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700

5/2/05



Kathleen J. Prunner

May 2, 2005